

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-CR-280

GERALD T. SMITH,

Defendant.

ORDER EXCLUDING TIME

Defendant Gerald T. Smith has been charged by indictment with Homicide by Intoxicated Use of a Motor Vehicle on the Menominee Indian Reservation contrary to 18 U.S.C. §§ 1112 and 1153, and Wis. Stat. § 346.63(1)(a) and (b).

Under the Speedy Trial Act, the defendant's trial was to commence no later than March 8, 2006. On February 24, 2006, the court granted the government's unopposed motion to adjourn the trial, finding that the delay was in the interest of justice and outweighed the interest of both the defendant and the public in a speedy trial pursuant to 18 U.S.C. § 3161(h)(8)(A). A new trial date was scheduled for May 2, 2006 with a final pre-trial to occur on April 14, 2006. Shortly before the final pre-trial, the defendant filed a motion to adjourn the trial date to allow him to obtain the services of an accident reconstruction expert to investigate the issue of whether the defendant was in fact the driver of the vehicle at the time of the fatal crash. The court granted the defendant's motion and rescheduled the jury trial to July 5, 2006, again without opposition from either the government or the defendant.

The court hereby specifically finds that the additional delay required by this adjournment is excluded from the Speedy Trial Act under the same provision, 18 U.S.C. § 3161(h)(8)(A). A crucial issue in the case appears to be whether the defendant was driving the vehicle. An accident reconstruction analysis will assist in determining this issue. Based upon the comments of counsel, the court is satisfied that the defendant is in need of such an investigation in order to assure a fair trial.

Accordingly, the court finds that the interest of justice outweighs the interest of the defendant and the public in a speedy trial and directs that the time necessary to accommodate the newly scheduled trial date be excluded from the computation of the defendant's speedy trial rights.

SO ORDERED this 19th day of April, 2006.

s/ William C. Griesbach

William C. Griesbach

United States District Judge